Second Federal Savings and Loan Association *and* United Retail Workers Union, Local 881, Chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC. Case 13-CA-22305

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 23 March 1983 Administrative Law Judge David L. Evans issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Second Federal Savings and Loan Association, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Add the following as paragraph 2(d):

"(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate our employees about their activities, or the activities of their fellow employees, on behalf of United Retail Workers Union, Local 881, chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC.

WE WILL NOT threaten to reduce the hours of employment of our employees because of their activities on behalf of the Union.

WE WILL NOT convey to our employees the impression that their activities on behalf of the Union are under surveillance.

WE WILL NOT refuse to assign full-time working hours to employees or otherwise discriminate against any of our employees because they engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL make Gus Vargas whole for any loss of earnings he may have suffered as a result of our refusal to assign him full-time working hours during the summer of 1982, with interest.

SECOND FEDERAL SAVINGS AND LOAN ASSOCIATION

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge: This proceeding was heard before me in Chicago, Illinois, on January 3 and 4, 1983, pursuant to a complaint issued on July 29, 1982.[1]

Said complaint is based on charges filed by United Retail Workers Union, Local 881 Chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC (herein called the Union). By said charges and complaint, Second Federal Savings and Loan Association (herein called the Respondent) is charged with various violations of Section 8(a)(1) of the Act and a violation of Section 8(a)(3) in the refusal to assign full-time hours to employee Gus Vargas during the summer of 1982. Respondent timely filed an answer admitting jurisdiction and the status of certain supervisors, but denying commission of any unfair labor practices. Respondent has filed a brief which has been carefully considered.

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent is a corporate entity with an office and place of business at 3960 West 26 Street, Chicago, Illinois, where it is engaged in providing various savings and loan services to the public. During the calendar year ending December 31, 1981, Respondent, in the course and conduct of said business operations, derived gross revenues in excess of $500,000 and purchased and received products, goods, and materials at its Chicago facilities valued in excess of $5,000 directly from suppliers located in points outside the State of Illinois. Therefore, Respondent is an employer engaged in commerce or in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

In its answer, Respondent disclaimed knowledge that the Union is a labor organization. In its brief, Respondent argues that the complaint should be dismissed because the General Counsel adduced no proof on the issue. The status of the Charging Party as a labor organization within the meaning of Section 2(5) of the Act was established in *Second Federal Savings & Loan*, 266 NLRB 204 (1983).

III. THE ALLEGED UNFAIR LABOR PRACTICES

Gus Vargas began working as a teller for Respondent in July 1980. He then worked 5 days, 55 hours per week. At the end of that summer he returned to high school and continued working Fridays from 3 p.m. to 8:30 p.m. and on Saturdays from 9 a.m. to 1:30 p.m. In June 1981 Vargas was approached by Mark Doyle, Respondent's vice president of operations, who asked if Vargas would work full time during the summer of 1981. Vargas agreed and worked full time, 37 hours per week, during that summer. In September 1981, after giving his class schedule to Doyle, he started his freshman year in college and returned to working part-time, Fridays and Saturdays.[2]

In addition to working part-time for Respondent during the 1981-82 school year, Vargas also worked part-time at a grocery store. Some employees at that store are represented by the Union. On April 21, Vargas secured authorization cards from representatives of the Union and he began distributing them to Respondent's employees, away from the premises, on April 22.

About 2 p.m. on April 23, Doyle approached employees Deborah Gumienny, Josephine Sanchez, and Hortensia Leal in Respondent's insurance department. All three employees testified that Doyle asked them if they had heard that union activity had begin and if they knew who was behind it. The employees told Doyle that they knew of the union activity but denied to him that they knew who was behind it. Doyle replied that he thought he knew who it was and left. Doyle denied questioning the employees and telling them that he thought he knew who was behind the union activity. I found the three employees credible and conclude that, by Doyle's conduct, Respondent interrogated its employees and made a statement reasonably calculated to create the impression that union activity of the employees was under surveillance by Respondent, both of which actions constitute violations of Section 8(a)(1) of the Act.

April 23 was a Friday on which Vargas was scheduled to work. He passed out authorization cards to fellow employees at breaks and after work. Vargas' teller cage was the last one other employees had to pass as they left work that evening. Vargas, who had also finished closing out his records, stopped several employees and solicited them to sign union authorization cards. Employees Kathleen Tapper and Gumienny were at a desk within 2 feet of Vargas. Vargas stopped employee Carelia Delgardo and asked her to sign one of the cards. As Delgardo was signing her card, Mark Doyle walked by. When Delgardo finished and began walking away, Doyle asked to see one of the cards and further asked Vargas if he was the one passing out the cards to other employees. Vargas showed Doyle a card and acknowledged that he had been distributing them. Doyle asked Vargas why he was not happy at work; Vargas replied that conditions were bad and that some employees, including himself, had failed to receive certain wage increases. Doyle asked why Vargas did not just leave rather then cause problems for Respondent, and Vargas replied that jobs were hard to find. Doyle asked Vargas if he was thinking of working full time that summer, and Vargas replied that he was. Vargas testified that Doyle replied, "Well, you might not have a job after all." Tapper testified that Doyle replied, "Just remember, the way things are we may not need you." Gumienny testified that Doyle replied, "Well, you better remember, we might not need you."

[1] Unless otherwise specified all dates herein are in 1982.

[2] The fact that Vargas worked the above hours is undisputed. Doyle denied expressly with Vargas agreeing that Vargas could work the hours as described above. I credit Vargas.

The preceding account of the conversation between Vargas and Doyle is taken from the credible employee testimony over denials by Doyle. Gumienny is a former employee who would have nothing to gain by giving false testimony. Tapper is a current employee who would not only have nothing to gain by perjury, but would have much to lose by testifying against Respondent. *Georgia Rug Mill*, 131 NLRB 1304 (1961). As well as having no reason to lie, Gumienny and Tapper had a far more credible demeanor than Doyle, as did Vargas. Accordingly, I find that Doyle interrogated Vargas about his union activity and sympathies and threatened[3] him with loss of employment because of such activities and sympathies, and I conclude that by these actions Respondent violated Section 8(a)(1) of the Act.

On the following Monday (April 26) Tapper was working in the mortgage department. According to Tapper, gathered at a desk across the room from her were Doyle, Vice President and Corporate Secretary Delores Pekala, and employees Chuck Kalal and Maureen Ulrydch. Tapper testified that at some point while those four were talking among themselves Doyle motioned towards her and said, "Well, ask her. She signed the card." At that point, Tapper got up from her desk, crossed the room, and confronted Doyle stating, "What makes you so sure I signed the card?" Doyle replied that he knew who the card signers were. Ulrydch asked Tapper where the next union meeting was going to be. Tapper said that she did not know. Doyle, again, according to Tapper, stated that it was to be at the Home-Run Inn (apprently a local tavern) and added that he would like to be there. Ulrydch and Kalal did not testify. Doyle and Pekala denied that any reference was made to Tapper during the conversation away from her desk. They testified that Doyle made no motion towards Tapper, but she intruded on the conversation. Doyle and Pekala further testified that the conversation had been about union activity, but that Tapper angrily interrupted stating that employees wanted a union because of the wages and working conditions provided by Respondent.

Tapper is, again, a current employee who presumably would have no reason to lie and much to lose by doing so. Moreover, she had a favorable demeanor. Pekala disclosed nothing about her demeanor but Doyle was most unfavorable. I credit Tapper and find that by Doyle's remarks Respondent made statements to employees reasonably calculated to convey the impression that their activities on behalf of the Union were under surveillance, a violation of Section 8(a)(1) of the Act.

Leal testified that sometime later during the week of April 16, while she was in the insurance department, Doyle asked her if she had signed a card on behalf of the Union. Leal replied to Doyle that she had not. Doyle denied interrogating Leal; however, I found Leal, a current employee, to have had a more credible demeanor than Doyle and conclude that by Doyle's questioning of Leal, Respondent interrogated its employees in violation of Section 8(a)(1) of the Act.

Vargas testified that on May 7 he contacted Maria Trevino, Respondent's senior teller, and asked if he could work full time during the summer. According to Vargas:

> I told [her] that I was out of school and was available for work. And she said she would talk to Mr. Doyle and get back to me . . . . [A] week later, on a Friday, when I went back to work, I reminded her again and she said that she had spoken to Mr Doyle but didn't get an answer. So she advised me that I should speak for myself. . . . I approached Mr. Doyle and asked [sic] him that I was available for work, at this time and I could began anytime he was ready. He said that he didn't know about it because business was kind of slow and that he would have to tell the other two part-timers the same thing. That was just it. He said that he would get back to me if he needed me but I never heard anything.

Trevino[4] testified that after the union activity had begun Vargas approached her and asked if he could work full time during the summer of 1982. She testified she presented the request to Doyle who said that Vargas should speak directly to him.

Doyle denied that Trevino contacted him about Vargas after the union activity had begun. He placed it "well before" he learned of the union activity. (As noted above, he learned of it at least by the afternoon of April 23 when he interrogated Gumienny, Sanchez, and Leal). He further denied that he told Trevino to tell Vargas to speak to him directly; he testified that he only told Trevino "I don't think we will need him." Trevino was far more credible than Doyle. I credit her testimony and find that Doyle-Trevino exchange took place after the union activity began, and that he told Trevino to tell Vargas to see him which, as credibly described in Vargas' testimony quoted above, is what happened.

In fact, Vargas continued to work only part-time for Respondent during the summer of 1982. During the summer Respondent allowed the two other students to change from part-time to full time. Also Respondent hired 13 new full-time tellers.[5]

Doyle testified that he alone made the decision that Vargas was not to be employed full time during the summer of 1982. According to Doyle:

> My feelings were that we simply did not need Gus to work full time. Business was rather slow at the time. Our lobby traffic was reduced by at least 50 percent. The environment that savings and loan were working under was such that business was very slow. At the time, and even now, there were at [sic] lot of mergers going on. Two savings and loans down the street from us were engaged in a merger, and as a result of that, they were part of a

[3] I believe the differences in the exact wording of the employees' account of Doyle's threat to Vargas to be insubstantial.

[4] Trevino had been discharged by Respondent at the time of the hearing. She was called by the General Counsel, but was a most reluctant witness and clearly evinced a disposition not to help either Vargas or Respondent.

[5] These new tellers were initially utilized as employees of a labor contractor whom Respondent paid for their services. Later, they were transferred to Respondent's payroll as its own employees.

> larger association. Our business was very slow at the time. I had not received a raise in over a year and half, and neither to my knowledge did any . . . of the other officers and employees. Business was slow. Tellers were standing behind the teller line with very little to do. I was spending a lot of my time just trying to find jobs for all of them, and my decision not to put him on full-time was based solely on that—that we didn't need him.

Doyle was asked to explain why Respondent had hired 13 new employees as well as converting the other two part-time employees to full time during the summer. Doyle testified that the other part-timers when employed pursuant to an agreement with a local high school and that he employed them as full-time employees after their work study program ended. Doyle testified that the decision to hire the 13 others was made by Respondent's president, E. J. Sierocinski. Doyle testified that Sierocinski ordered him to hire the 13 new employees to get an improvement and quality. On cross-examination he was asked:

> Q. Did any of these tellers have previously [sic] experience working at [sic] bank?
>
> A. I'm not certain as to what their previous experience was. I know that they were either in college or trying to work their way through college in getting a job temporarily so they could go back to school.
>
> JUDGE EVANS: So, you don't know either way?
>
> THE WITNESS: No, I don't know. I read their work history.
>
> JUDGE EVANS: You did?
>
> THE WITNESS: No, I did not.

Doyle acknowledged that all 13 of the new hires had to undergo a training program. When asked to describe the training program, he testified:

> It's showing them was [sic] a deposit slip is, how to fill a deposit slip out, how to fill a withdrawal slip out, the mortgage — what a mortgage was, very simple procedures on how to handle the teller terminal, what a check was — some checks that are acceptable and some that aren't, and what our rules are.

Doyle added that he was not involved in the training which was handled by tellers.

Doyle was the immediate supervisor of these 13 tellers, but, as quoted above, he denied, after admitting, that he had even read their work histories upon their being employed. He further denied knowing if these, as well as other full-time employees, got bonuses during the summer of 1982. This testimony, to say the least, is incredible. Although Doyle denied knowing the extent of their prior work experience, since the training program included showing the new hires what a deposit slip was, explaining to them what a mortgage was, and showing them what a check was, clearly the new hires must have been inexperienced, and I so find and conclude.

Therefore, according to Doyle, Respondent did not need Vargas, an experienced teller, during the summer of 1982, but did need, full time, 13 inexperienced employees as well as two employees who had served less time than Vargas with Respondent. This is too much to believe, and I do not.[6]

In the summer of 1982, the only employee for which Respondent found a reduction of hours necessary was Vargas.[7] Vargas was the only employee-solicitor for the Union and was the object of a direct threat by Doyle to reduce his employment because of that activity. Because of this threat, because of the interrogations and other coercive remarks to other employees, and because of the fact that employers do not simultaneously conduct one-employee reductions in force, while hiring 13 inexperienced employees, I find that the sole reason that Vargas was not employed full time during the summer of 1982 was his activity on behalf of the Union. Accordingly, I conclude that by this action Respondent violated Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By interrogating employees about their union activities and the union activities of their fellow employees, by threatening employees with a reduction in employment because of their union activities, and by conveying to employees the impression that their activities on behalf of the Union were under surveillance, Respondent has violated Section 8(a)(1) of the Act.
4. By refusing to assign full-time working hours to employee Gus Vargas during the summer of 1982 because of his activities on behalf of the Union, Respondent has violated Section 8(a)(3) and (1) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative actions designed to remove the effects thereof and to effectuate the policies of the Act.

Having found that Respondent unlawfully refused to assign full-time work to Gus Vargas during the summer of 1982, I shall recommend that Respondent be ordered to make him whole for the loss of any earnings he may have suffered as a result of the discrimination against him. The amount of backpay shall be computed in the

[6] The Board noted the inherent incredibility of a proposition that an employer would retain inexperienced employees in preference to experienced ones in *Eastern Engineering & Elevator Co.*, 247 NLRB 43 (1980).

[7] In its brief Respondent argues that no reduction of hours took place; that Vargas' hours just were not increased in the summer of 1982. There was a reduction of hours; Vargas worked full time the two prior summers, but not the summer of 1982. That was a reduction of his hours of employment, at least on a per annum basis. Moreover, if his hours were not increased because of discriminatory motivation, a violation is still made out.

manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact and the entire record in this proceeding, I issue the following recommended:

ORDER[8]

The Respondent, Second Federal Savings and Loan Association, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees about their activities, or the activities of their fellow employees, on behalf of United Retail Workers Union, Local 881, Chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC.

(b) Threatening to reduce the hours of employment of its employees because of their activities on behalf of the Union.

(c) Conveying to its employees the impression that their activities on behalf of the Union were under surveillance.

(d) Refusing to assign full-time hours to employees or otherwise discriminating against its employees because they engage in union or other protected concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Make Gus Vargas whole for any loss of earnings he may have suffered as a result of Respondent's refusal to assign him full-time hours during the summer of 1982 in the manner set forth in The Remedy section of this Decision.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its place of business at 3960 West 26 Street, Chicago, Illinois, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."